BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2023-388-E

In the Matter of:	)	
	)	**DIRECT TESTIMONY OF**
Application of Duke Energy Carolinas, LLC	)	**JOHN R. PANIZZA**
For Authority to Adjust and Increase its Electric	)	**FOR DUKE ENERGY**
Rates and Charges	)	**CAROLINAS, LLC**

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is John R. Panizza, and my business address is 525 South Tryon Street, Charlotte, North Carolina 28202.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Duke Energy Business Services LLC ("DEBS") as Director, Tax Operations. DEBS provides various administrative and other services to Duke Energy Carolinas, LLC ("DEC" or "Company") and other affiliated companies of Duke Energy Corporation ("Duke Energy").

Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES AS DIRECTOR, TAX OPERATIONS.

A. The Tax Department is responsible for maintaining and reconciling Duke Energy's tax accounts and for the reporting and disclosure of tax-related matters.

As Director, Tax Operations, I have overall responsibility for corporate tax compliance, and accounting for Duke Energy and its operating subsidiaries, including the Company. The Duke Energy Tax Operations Department, which I manage, is staffed by the public accounting firm Ernst & Young to provide efficient and technical tax services, and is responsible for all federal, state, and local income tax returns for Duke Energy, including various joint ventures if Duke Energy is the designated tax matters partner.

Q. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I have a Bachelor of Science degree in Accounting from Montclair State University and a Master's degree in Taxation from Seton Hall University. I am a Certified Public Accountant in the state of New Jersey. My professional work experience began in 1989 as an auditor with the global public accounting firm, KPMG. From 1993 to 2002, I held a number of financial positions, primarily in the telecommunications and automotive industries (AT&T Corp. and Collins & Aikman Inc.). In 2002, I joined Duke Energy and have held a number of financial positions of increasing responsibilities, including various accounting and tax related positions. In March 2018, after a three-year rotation primarily in Corporate Accounting, I moved back into the role of Director, Tax Operations, a position that I had previously held.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA ("COMMISSION")?

A. Yes, I previously filed testimony before this Commission in Docket No. 2018-318-E. I have also filed testimony on behalf of Duke Energy operating subsidiaries in proceedings before utility commissions in Florida, Indiana, Kentucky, and North Carolina.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. My testimony addresses certain aspects of the recently enacted Inflation Reduction Act of 2022 (the "IRA"), which introduces new, and expands existing, federal tax benefits, to incentivize the development and use of renewable and alternative carbon-free energy sources. My testimony focuses on the IRA's Nuclear Production Tax Credit (the "NPTC"), provided for under § 45U of the Internal Revenue Code ("IRC"), in support of the Company's deferral request relating to NPTCs, which is detailed in the testimony of DEC Witness LaWanda Jiggetts.

In this connection, my testimony discusses the current uncertainties attendant upon calculation of the tax credits as we await definitive guidance from the United States Department of the Treasury ("Treasury") with respect to key aspects of the NPTC. As described by Witness Jiggetts, this has prompted DEC to seek a deferral of future NPTC impacts, net of costs associated with obtaining and maximizing the value of the tax credits, in this proceeding. Nevertheless, despite the further clarity from Treasury that is needed to make NPTC calculations, DEC believes that the low-cost operational performance of its existing nuclear fleet will position Duke Energy to receive a substantial tax benefit, up to several hundred million dollars a year beginning in 2024.

Q. AS BACKGROUND TO THE REMAINDER OF YOUR TESTIMONY, PLEASE BRIEFLY DESCRIBE THE IRA AND DISCUSS ITS APPLICATION TO THIS PROCEEDING.

A. On August 16, 2022, President Biden signed the IRA into law. As I note above, the IRA introduces new and expands existing federal tax credits that are intended to incentivize the development and use of renewable and alternative carbon-free energy sources. Of relevance here, the IRA creates a new, zero-emission nuclear power production credit under new IRC § 45U for producing electricity at a qualified nuclear power facility that is sold by the taxpayer to an unrelated person and introduces a two-tier credit structure with a base rate and a total bonus rate achieved if prevailing wage requirements are met. The novelty of these provisions results in taxpayer uncertainty as to proper application and the need for further clarity from Treasury as to the incremental increase in costs to comply with certain of the eligibility requirements.

As I understand it, in this case these provisions of the IRA do not impact the Company's revenue requirement in this case as the NPTCs are earned based upon actual nuclear production from 2024 through 2032. Nevertheless, as explained in the testimony of Witness Jiggetts, the Company is requesting Commission approval to use the benefits associated with future NPTCs generated under the IRA, net of costs associated with obtaining and maximizing the value of these tax benefits, to maximize the benefit to DEC customers by offsetting certain future costs and then defer to a regulatory liability any

remaining benefits to be considered in a future rate case. Accordingly, my testimony describing the NPTC supports this request.

III. NUCLEAR PRODUCTION TAX CREDIT

Q. PLEASE DESCRIBE A PRODUCTION TAX CREDIT ("PTC").

A. For electricity generation, a PTC provides the generator with a tax credit for the production of electricity, provided certain conditions are met. The PTC is a per-kilowatt-hour ("kWh") tax credit for electricity produced at a qualified facility over a certain period of time (normally 10 years, although the applicable NPTC period is 9 years, through 2032). The tax credit has the effect of reducing the electricity producer's federal income tax liability, thereby reducing costs for a regulated utility's customers. The NPTC thus provides a federal subsidy for the production of electricity from the Company's existing nuclear fleet, assuming the generator meets the requirements of the credit.

The IRA permits transfer of PTCs generally (and the NPTC is no exception) under new IRC § 6418. This provision permits an eligible taxpayer to elect to transfer all (or any portion specified in the election) of an eligible credit to an unrelated transferee taxpayer. The transfer may have the effect of accelerating monetization of these PTCs, which may potentially benefit customers, but such acceleration will likely come at a cost, both in terms of transaction costs (*e.g.*, legal fees) as well as a discount on the total credit value to induce the transferee to accept the transfer. In addition, transfers are subject to various restrictions. The transfer must be paid in cash, not be included in the income of the recipient taxpayer, and not be deducted by the paying taxpayer.

Further, the transfer must be a one-time transfer (*i.e.*, the transferee cannot make a subsequent election to further transfer any portion of the transferred credit). The taxpayer must elect to transfer the credits no later than the due date (including extensions) for the tax return for the tax year for which the credit is determined, and any election, once made, is irrevocable.

Q. PLEASE PROVIDE AN OVERVIEW OF THE NEW § 45U NUCLEAR PRODUCTION TAX CREDIT.

A. The IRA creates a new, zero-emission nuclear power production credit under new IRC § 45U for producing electricity at a qualified nuclear power facility that is sold by the taxpayer to an unrelated person. A qualified nuclear power facility means any nuclear facility that: (1) is owned by the taxpayer and uses nuclear energy to produce electricity, (2) is not an advanced nuclear power facility as defined in IRC § 45J(d)(1); and (3) is placed in service before the enactment of IRC § 45U.

The new IRC § 45U tax credit is subject to a two-tiered credit regime, with a base credit amount of 0.3 cents per kWh, and a top, total bonus amount of up to 1.5 cents per kWh (assuming the prevailing wage requirements, described in more detail below, are met). The tax credit will also be reduced by 16% of the excess of gross receipts from electricity produced and sold over $0.025 multiplied by the amount of electricity sold, as calculated annually during the period of credit eligibility. Additionally, the new IRC § 45U tax credit, which is generally effective for electricity produced and sold after December 31, 2023 (in tax years beginning after such date), does not apply to

tax years beginning after December 31, 2032. As discussed further below, uncertainty exists related to the application of § 45U, specifically, the proper application of the gross receipts test. DEC is awaiting guidance and interpretations from Treasury in order to be able to determine the precise level of NPTC for which DEC's nuclear generating units could be eligible. Additionally, the amount of NPTC earned by DEC will be dependent upon actual nuclear generation production in future years which can vary depending upon planned and unplanned nuclear outages.

Q. PLEASE EXPLAIN FURTHER THE PREVAILING WAGE REQUIREMENTS THAT TAXPAYERS MUST MEET IN ORDER TO OBTAIN THE NPTC BONUS CREDIT AMOUNT.

A. As previously stated, the IRA contains a two-tiered credit-amount structure for the § 45U NPTC. If taxpayers meet the prevailing wage requirements the lower NPTC base amount of 0.3 cents per kWh can be increased to five times that, or 1.5 cents per kWh. In general, to satisfy the prevailing wage requirement, all laborers, mechanics and workers – including Company employees as well as third party contractors or subcontractors – are to be paid the "prevailing wage" during project construction (and, during the credit term, for repairs and alterations).

Notice 2022-61, issued November 30, 2022, clarifies that the new prevailing wage requirements apply to laborers and mechanics that are employed by the taxpayer and its contractors or subcontractors, and are engaged in the construction, alteration or repair of a qualified facility. Additionally,

Notice 2022-61 provides that the prevailing wage must be at least the amount paid in that locality for similar services, as most recently determined by the Secretary of Labor.

Q. IS THERE A COST TO DEC TO COMPLY WITH THE PREVAILING WAGE REQUIREMENTS?

A. Yes. In order to meet the prevailing wage requirement, laborers and mechanics that are employed by the taxpayer and its contractors or subcontractors, and are engaged in the construction, alteration or repair of a qualified facility, must be paid at least the prevailing wage (*i.e.,* an amount paid in that locality for similar services, as most recently determined by the Secretary of Labor) during project construction and through the credit term for any necessary repairs or alterations.

Therefore, it is likely that DEC will experience incremental cost in connection with meeting the prevailing wage requirement, although that cost is expected to be more than offset by increased tax credit amounts, assuming the clarity attendant upon the calculation of the credit that I further describe below is received in a manner favorable to DEC. We believe the majority of the expected incremental increase in costs will stem from the contractors serving as laborers or mechanics engaged in qualified nuclear facility construction, repairs, and alterations. Duke Energy incurs over $1 billion a year in contractor expenses related to its nuclear facility operations, and, as it currently stands under existing contractual terms, some of its contractors are not currently paying a "prevailing wage" to the laborers and mechanics provided under these contracts to assist in DEC's nuclear facility outage responses and other similar

operations. The delta between the current hourly rate and the increased hourly rate necessary to meet the prevailing wage requirement will necessitate contract modifications, with an increased cost to DEC as a result for the provision of these services. To illustrate with one example, currently one of DECs larger nuclear labor contractors is paying its journeyman electricians $28 per hour. However, the prevailing wage determined by the Secretary of Labor in the county where nuclear facility outage services are being performed is $44.88. This delta of $16.88 multiplied by the hundreds of expected hours to be incurred by these laborers and mechanics will result in increased costs to maximize the benefits of the NPTC. It should be noted that this example is not unique to the electrician labor classification; similar situations exist throughout the labor classifications utilized by Duke Energy's nuclear labor contractors. However, until these contracts are renegotiated, and the actual time spent on outage related repairs and alterations is incurred, there exists uncertainty as to an appropriate method to estimate these expenses.

Additionally, there will likely be administrative costs associated with tracking continued compliance with the prevailing wage requirement, and uncertainty as to the resources required to document and ensure continued compliance during the credit term. As Witness Jiggetts explains in her testimony, the Company's proposal would net the incremental costs to obtain and maximize NPTCs against the benefits received from the tax credits.

Q. CAN YOU EXPLAIN FURTHER THE UNCERTAINTY THAT EXISTS RELATED TO THE NPTC GROSS RECEIPTS TEST?

A. Yes. The NPTC will be reduced by 16% of the excess of gross receipts from electricity produced and sold over $0.025 multiplied by the amount of electricity sold, as calculated annually during the period of credit eligibility – providing more benefit to lower-cost nuclear production facilities. Simply put, NPTCs are reduced ratably where the average price of electricity sold during the year exceeds $25/MWh, with $43.75/MWh (adjusted annually for inflation) being the point at which the credit phases out completely. But it is impossible to calculate the precise contour of the NPTC until one knows how Treasury is going to define "gross receipts" in the application of this test. This is particularly relevant for a regulated public utility like DEC, as I explain below.

The average annual price per MWh is derived by dividing the annual output from the nuclear facility by the gross receipts from that output. For regulated utilities, such gross receipts are not explicit for output from a given nuclear facility and instead are generally inherent in customer rates that are established or approved by a public utility commission under a cost-of-service methodology that allows the utility to recover the cost to own and operate the generation (nuclear and non-nuclear), transmission, and distribution assets it uses to serve its customers. Until addressed through forthcoming Treasury guidance, significant uncertainty exists as to how a regulated utility should determine its gross receipts from electricity produced and sold from a given nuclear facility.

In sum, DEC expects the electricity it sells during the period in which the NPTC is in effect (*i.e.,* from 2024-2032) to qualify for the credit. However, the actual credit amount could vary significantly and be anywhere from $0 to $15/MWh because the credit rate with respect to any such facility effectively starts to phase down, ratably, when the average price per MWh at which the facility's annual output is sold exceeds $25 (without regard to any inflation adjustment) and effectively reaches $0/MWh when such price per MWh reaches $43.75 (assuming no inflation adjustment to the credit rate or the price at which the credit rate effectively starts to phase down). The ultimate amount of the PTC earned by eligible facilities will be determined annually based upon the $/MWh at which production is sold, and the precise contours of this calculation are dependent upon Treasury guidance on the "gross receipts" test.

IV. CONCLUSION

Q. HOW DO YOU ANTICIPATE THE § 45U NPTC WILL IMPACT DEC?

A. As noted above, DEC anticipates that it will qualify for the IRC § 45U NPTC related to its existing nuclear facilities, and further anticipates that the credits will provide a substantial customer benefit, but at this time is unable to estimate the potential impact due to continued uncertainty regarding proper application of this credit framework. Additionally, these NPTCs do not impact the revenue requirement in this case as the NPTCs are earned based upon actual future nuclear facility production from 2024 through 2032. As further detailed in Witness Jiggetts' testimony, the Company is seeking an accounting order to defer any future NPTC impacts, so as to ensure that customers ultimately

receive the benefits of any future NPTCs generated, net of the costs associated with obtaining and maximizing the value of these tax credits.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes. It does.